Congress of the United States Mashington, DC 20515

January 9, 2017

The Honorable Andrew M. Slavitt Acting Administrator Centers for Medicare & Medicaid Services 7500 Security Boulevard Baltimore, Maryland 21244-1850

Dear Mr. Slavitt:

On January 4, 2017, newly elected North Carolina Governor Roy Cooper announced his intention to expand Medicaid coverage under the Patient Protection and Affordable Care Act by submitting a plan to the Centers for Medicaid and Medicaid Services (CMS). Such actions would be a violation of multiple North Carolina laws as well as the North Carolina Constitution.

Specifically, section 3 of Session Law 2013-5, which became effective on March 6, 2013, states: "The State will not expand the State's Medicaid eligibility under the Medicaid expansion provided in the Affordable Care Act, P.L. 111-148, as amended, for which the enforcement was ruled unconstitutional by the *U.S. Supreme Court in National Federal of Independent Business, et al. v. Sebelius, Secretary of Health and Human Services, et al.*, 132 S. Ct. 2566 (2012). No department, agency, or institution of this State shall attempt to expand the Medicaid eligibility standards provided in S.L. 2011-145, as amended, or elsewhere in State law, unless directed to do by the General Assembly."

Additionally, G.S. 108A-54(f), which became effective on September 23, 2015, as provided in Section 13 of Session Law 2015-245, states: "The General Assembly shall determine the eligibility categories and income thresholds for the Medicaid and NC Health Choice programs."

Furthermore, G.S. 108A-54(e), as amended effective June 1, 2016, pursuant to Section 2(h) of Session Law 2016-121, states: "Prior to and following the exchange of powers and duties from the Division of Medical Assistance to the Division of Health Benefits, and in addition to the powers and duties already vested in the Secretary of the Department of Health and Human Services, the Secretary of the Department of Health and Human Services, through the Division of Heath Benefits, Services shall have the following powers and duties: ... (4) Establish and adjust all program components, except for eligibility categories and income thresholds, of the Medicaid and NC Health Choice programs within the appropriated and allocated budget." This same statute also highlights that the Department of Health and Human Services power to "administer and operate the Medicaid and NC Health Choice Programs" is "provided that the total expenditures, net of agency receipts, do not exceed the authorized budget for the Medicaid program and NC Health Choice program."

Finally, the North Carolina General Assembly has the sole authority for all matters dealing with the taxation and appropriation of funds. This is an undeniable authority that is expressly stated

in the North Carolina Constitution. Article II, Section 23 states, "No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal." Furthermore, Article V, Section 7 states, "No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually."

No Governor of North Carolina has the legal authority to submit a Medicaid expansion plan to CMS. Such actions would commit the state to approximately \$600 million in new spending each year. It is unfortunate that one of Mr. Cooper's first actions as Governor is to directly go against the same state law and Constitution he swore to uphold. It is for these reasons that we urge CMS to reject Governor Cooper's proposal.

Sincerely,

Richard Hudson

Member of Congress

Ted Budd

Member of Congress

George Holding

Member of Congress

Mark Meadows

Member of Congress

Robert Pittenger

Member of Congress

Virginia Foxx

Member of Congress

Patrick McHenry

Member of Congress

David Rouzer

Member of Congress

Mark Walker

Member of Congress